

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|-----------------|---|--------------|
| KATHLEEN BROWN, |) | CIVIL ACTION |
| |) | |
| Plaintiff |) | NO. 03-224E |
| |) | |
| Vs. |) | |
| |) | |
| COST COMPANY, |) | |
| |) | |
| Defendant |) | |

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION
FOR FIFTEEN-DAY ENLARGEMENT OF TIME IN WHICH TO FILE BRIEF
IN SUPPORT OF AMENDED MOTION FOR NEW TRIAL PURSUANT TO F.R.C.P 59**

AND NOW, comes the Defendant, COST COMPANY ("Cost"), by and through its attorneys, LUTZ & PAWK and MICHAEL J. PAWK, ESQUIRE, and files this Response in Opposition to Plaintiff's Motion for Enlargement of Time in Which to File a Brief in Support of its Amended Motion for New Trial and, in support thereof, avers as follows:

1. On or about June 24, 2005, Plaintiff filed a Motion for New Trial Pursuant to F.R.C.P. 59. Plaintiff did not file a Brief in Support of her Motion.

2. On or about July 21, 2005, Defendant, Cost, filed a Response to Plaintiff's Motion for New Trial.

3. By Order of Court dated August 10, 2005, this Court directed the Plaintiff to file her Brief in Support of her Amended Motion for New Trial within fourteen days of the filing of the trial transcript.

4. The trial transcript was filed on October 17, 2005, therefore, the Plaintiff's Brief was due on or before October 31, 2005.

5. On Friday, October 28, 2005, the undersigned received a telephone call from Plaintiff's attorney, Mr. Matesic, who inquired as to whether undersigned counsel would consent to Plaintiff's Motion for an enlargement of time in which to file her Brief in support of her Amended Motion for New Trial.

6. The undersigned informed Attorney Matesic that the Defendant was opposed to any enlargement of time for Plaintiff to file her Brief. Further, the undersigned requested that Attorney Matesic provide the undersigned with a copy of the Motion that Plaintiff intended to file so that the Defendant could file a response in opposition to Plaintiff's Motion for Enlargement of Time in Which to File her Brief in Support of Amended Motion for New Trial.

7. Plaintiff's counsel informed the undersigned that he would provide a copy of the Motion via e-mail, as well as facsimile.

8. Despite these representations, Plaintiff's counsel failed to provide the undersigned with a copy of the Motion it filed with the Court on October 28, 2005 at 4:08 p.m.

9. Additionally, Plaintiff failed to advise the Court that the Defendant opposed the Motion.

10. The undersigned first learned of the filing of the Motion on October 31, 2005, when he contacted this Court's law clerk, Becky Humphrey, and she advised that the Motion had been filed and an Order of Court granting the Motion had been signed on that date.

11. Defendant opposes Plaintiff's Motion for an enlargement of time in which to file a Brief in Support of her Amended Motion for New Trial and ask that this Court reconsider granting that Motion.

12. Plaintiff has had ample time from June 24, 2005, in which to prepare a Brief in Support of her Motion for New Trial. In fact, Plaintiff's Motion for New Trial, although set forth in numbered paragraphs, is replete with citations to legal authority supporting Plaintiff's position.

13. Little additional work is needed for Plaintiff to prepare her Brief in Support of her Motion for New Trial.

14. Additionally, granting this Motion would unduly delay these proceedings.

15. Defendant, Cost, respectfully requests that this Court reconsider Plaintiff's Motion for Fifteen-day Enlargement of Time in which to file Brief in Support of Amended Motion for New Trial and issue an Order denying said Motion.

WHEREFORE, Defendant, COST COMPANY, respectfully requests that this Honorable Court reconsider the Plaintiff's Motion for Enlargement of Time in which to File her Brief in Support of her Amended Motion for New Trial and issue an Order denying said Motion.

Respectfully submitted,

LUTZ & PAWK



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CERTIFICATE OF SERVICE

I, **MICHAEL J. PAWK, ESQUIRE**, hereby certify that a true and correct copy of the foregoing **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR FIFTEEN-DAY ENLARGEMENT OF TIME IN WHICH TO FILE BRIEF IN SUPPORT OF AMENDED MOTION FOR NEW TRIAL PURSUANT TO F.R.C.P 59** was served on the following on this the 2 day of November 2005, **VIA REGULAR, FIRST-CLASS MAIL:**

Richard S. Matesic, Esq.
Attorney at Law
1007 Mount Royal Blvd.
Pittsburgh, PA 15223



Michael J. Pawk, Esq.,
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Law Offices

LUTZ & PAWK

Lawrence P. Lutz
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Reply to: Butler Office

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November 2, 2005

VIA UPS OVERNIGHT DELIVERY

Office of the Clerk
United States District Court
Western District of Pa. – Erie
17 South Park Row
Erie, PA 16501

RE: Kathleen Brown v. Cost Company
Civil Action No. 03-224E, U. S. District Court, Western District

To Whom It May Concern:

Please file the enclosed Response in Opposition to Plaintiff's Motion for Fifteen-Day Enlargement of Time in which to File Brief in Support of Amended Motion for New Trial. As requested, I have enclosed a floppy disk which contains a copy of the Motion in PDF format. Please also date and time stamp the extra copy of the Motion and return it to me in the envelope provided.

Very truly yours,

LUTZ & PAWK



Michael J. Pawk

MJP/jg
Enclosure

cc: Cost Company
Richard Matesic, Esq.